

§1940.318

7 CFR Ch. XVIII (1–1–05 Edition)

structures necessary for farm operations;

(10) Prime Forest Lands—the proposed action would convert prime forest land to another use(s), except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(11) Prime Rangelands—the proposed action would convert prime rangeland to another use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(12) Approved Coastal Zone Management Area—the proposed action would be located within such area and no agreement exists with the responsible State agency obviating the need for a consistency determination for the type of action under consideration;

(13) Sole Source Aquifer Recharge Area—the proposed action would be located within such area and no agreement exists with the Environmental Protection Agency (EPA) obviating the need for EPA's review of the type of action under consideration; and

(14) State Water Quality Standard—the proposed action would impair a water quality standard, including designated and/or existing beneficial uses, or would not meet applicable antidegradation requirements for point or nonpoint sources.

(f) From the above paragraph (e), it should be noted that the location within the project site of any of the land uses and environmental resources identified in paragraphs (e) (1), (2), (9), (10), (11), (12), and (13) of this section is not sufficient for an action to lose its categorical exclusion. Rather, the land use or resource must be affected in the case of paragraphs (e) (1), (2), (9), (10), and (11) of this section. For paragraphs (e) (12), (13) and (14) of this section, further review and consultation can be avoided by written agreement with the responsible agency detailing the types of actions not requiring interagency review.

(g) Whenever a categorical exclusion loses its status as an exclusion for any of the reasons stated in paragraph (e) of this section, the environmental impacts of the action must be reviewed through the preparation of a Class I assessment, Form FmHA or its successor agency under Public Law 103–354 1940–

21. Not all of the procedural requirements for a Class I assessment apply in this limited case, however. The following exemptions exists:

(1) No public notice provisions of this subpart apply.

(2) The applicant does not complete Form FmHA or its successor agency under Public Law 103–354 1940–20.

(3) The action does not require a Class II assessment should more than one important land resources be affected.

§1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the preparer (as defined in §§1940.302(i) and 1940.316 of this subpart) is to examine Form FmHA or its successor agency under Public Law 103–354 1940–20 submitted by the applicant to determine if it is complete, consistent, fully responsive to the items, signed, and dated. If not, it will be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment will be initiated in the format and manner described in exhibit H of this subpart. In completing the assessment, appropriate experts from State and Federal agencies, universities, local and private groups will be contacted as necessary for their views. In so doing, the preparer should communicate with these agencies or parties in the most appropriate and expeditious manner possible, depending upon the seriousness of the potential impacts and the need for formal documentation. Appropriate experts must be contacted whenever required by a specific provision of this subpart or whenever the preparer does not have sufficient data or expertise available within FmHA or its successor agency under Public Law 103–354 to adequately assess the degree of a potential impact or the need for avoidance or mitigation. Comments from an expert must be obtained in writing whenever required by a specific provision of this subpart or the potential environmental impact is either controversial, complex, major, or apparently major. When correspondence is exchanged, it will be appended to the assessment. Oral discussions should be documented in the

manner indicated in exhibit H of this subpart. On the other hand, there is no need for the preparer to seek expert views outside of the Agency when there is no specific requirement to do so and the preparer has sufficient expertise available within FmHA or its successor agency under Public Law 103-354 to assess the degree of the potential impact and the need for avoidance or mitigation.

(c) At the earliest possible stage in the assessment process, the preparer will identify the Federal, State, and local parties which are carrying out related activities, either planned or under way. Discussions with the applicant and FmHA or its successor agency under Public Law 103-354 staff familiar with the project area should assist in this identification effort. If there is a potential for cumulative impacts, the preparer will consult with the involved agencies to determine the nature, timing and results of their environmental analysis. These consultations will be documented in the assessment and considered or adopted when making the environmental impact determination. (See §1940.324 of this subpart concerning adoption of assessments.) If it is determined that the cumulative impacts are significant, the preparer will further contact the involved Federal agencies and attempt to determine the lead Federal Agency as discussed in §§1940.320(b) and 1940.326 of this subpart.

(d) Consultations similar to those discussed in paragraph (c) of this section will also be undertaken with those Federal and State agencies which are directly involved in the FmHA or its successor agency under Public Law 103-354 action, either through the provision of financial assistance or the review and approval of a necessary plan or permit. For example, a construction permit from the U.S. Army Corps of Engineers may be required for a project. In such an instance, the environmental assessment cannot be completed until the preparer has either reviewed the other Agency's completed environmental analysis or consulted with the other Agency and is reasonably sure of the scope, content, and expected environmental impact determination of the forthcoming analysis

and has so documented for the FmHA or its successor agency under Public Law 103-354 assessment this understanding. If the other Agency believes that the project will have a significant impact, a joint or lead impact statement will be prepared. If the other Agency does not believe a significant impact will occur, the preparer will consider this finding and its supporting analysis in completing the FmHA or its successor agency under Public Law 103-354 environmental impact determination. Guidance in adopting an environmental assessment prepared by another Federal Agency is provided in §1940.324 of this subpart.

(e) For actions having a variety of complex or interrelated impacts that are difficult for the preparer to assess, consideration should be given to holding a public meeting in the manner described in §1940.331(c) of this subpart. Such meetings should not be assumed as being limited to projects for which EISs are being prepared. Such a meeting can serve a useful purpose in better defining and identifying complex impacts, as well as locating expertise with respect to them. The results of a public meeting and the follow-up from it can also serve as a valuable tool in reaching an early understanding on the potential need for an EIS. When identified impacts are difficult to quantify (such as odor and visual and community impacts) or controversial, a public information meeting should be held near the project site and the local area's concern about it. Whenever held, it should be announced and organized in the manner described in §1940.331(c). However, a transcript of the meeting need not be prepared, but the preparer will make detailed notes for incorporation in the assessment. (See §1940.331(c) of this subpart.)

(f) Throughout this assessment process, the preparer will keep in mind the criteria for determining a significant environmental impact. If at any time in this process it is determined that a significant impact would result, the preparer will so notify the approving official. Those actions specified in §1940.320 of this subpart will then be initiated, unless the approving official disagrees with the preparer's recommended determination, in which

case further review of the determination may be required as explained in §1940.316 (b), (d) and (e) of this subpart. As soon as possible after the need for an EIS is determined, the applicant will also be advised of this in writing, as well as reinforced of the limitations on its actions during the period that the EIS is being completed. (See §1940.309(e) of this subpart.) The applicant's failure to comply with these limitations will be considered as grounds for postponement of further consideration of the application until such problem is alleviated.

(g) Similarly, throughout the assessment process, consideration will be given to incorporating mechanisms into the proposed action for reducing, mitigating, or avoiding adverse impacts. Examples of such mechanisms which are commonly referred to as mitigation measures include the deletion, relocation, redesign or other modifications of the project elements; the dedication of environmentally sensitive areas which would otherwise be adversely affected by the action or its indirect impacts; soil erosion and sedimentation plans to control runoff during land-disturbing activities; the establishment of vegetative buffer zones between project sites and adjacent land uses; protective measures recommended by environmental and conservation agencies, including but not limited to interstate, international, Federal, State, area-wide, and local agencies having jurisdiction or special expertise regarding the action's impacts; and zoning. Mitigation measures must be tailored to fit the specific needs of the action, and they must also be practical and enforceable. Mitigation measures which will be taken must be documented in the assessment (Item XIX of exhibit H of this subpart), and include an analysis of their environmental impacts and potential effectiveness and placed in the offer of financial assistance as special conditions or in the implementation requirements when the action does not involve financial assistance. These measures will be consistent with the basic goal of the proposed action and developed in consultation with the appropriate program office.

(h) As part of the assessment process, the preparer will initiate the consultation and compliance requirements for the environmental laws, regulations, and Executive orders specified in the assessment format. The assessment cannot be completed until compliance with these laws and regulations is appropriately documented. The project's failure to meet the requirements specified in Item 10b of Form FmHA or its successor agency under Public Law 103-354 1940-21 for a Class I action and Item XXIIb of exhibit H of this subpart for a Class II action will result in postponement of further consideration of the application until such problem is alleviated.

(i) When the preparer has completed the assessment, the related materials and correspondence utilized will be attached. The preparer will then either recommend to the approving official that the action has the potential for significantly affecting the quality of the human environment or will recommend that the action does not have this potential and, therefore, the preparation of an EIS is not necessary. (Item 10a of Form FmHA or its successor agency under Public Law 103-354 1940-21 for Class I action and item XXIa of exhibit H of this subpart for a Class II action.) The recommended environmental findings will also be completed. (Item 10b of Form FmHA or its successor agency under Public Law 103-354 1940-21 for a Class I action and Item XXIIb of exhibit H of this subpart for a Class II action.) In those instances specified in §1940.316, the assessment will then be forwarded to the concurring official and, as required, to the SEC for review. The concurring official will coordinate, as necessary, with the preparer any questions, concerns or clarifications and complete and document the review prior to the assessment being submitted to the approving official or the SEC. The SEC will coordinate with the concurring official in a similar fashion whenever the latter's review is required.

(j) The approving official will review the environmental file and recommendations. The official will then

execute the environmental impact determination and findings. If the conclusions reached are that there is no significant impact and there is compliance with the listed requirements, the format contained in exhibit I of this subpart will be used. If a significant impact is determined, the steps specified in §1940.320 of this subpart will be initiated for the preparation of the EIS. If a determination is made that the proposed action does not comply with the environmental requirements that are explained in this subpart and listed in Item 10b of Form FmHA or its successor agency under Public Law 103-354 1940-21 for a Class I action or Item XXIIb of exhibit H of this subpart for a Class II action and there are no feasible alternatives (practicable alternatives when required by specific provisions of this subpart), modifications, or mitigation measures which could comply, the action will be denied or disapproved. If the approving official's determination or findings differ from the recommendations of the preparer, concurring official or the SEC, this difference will be addressed in the manner specified in §1940.316 of this subpart.

(k) When there is no need for further review as discussed in paragraph (j) of this section and findings of compliance and a determination of no significant impact are reached, the assessment process is conditionally concluded. To conclude the assessment, the applicant will then be requested to provide public notification of these results as indicated in §1940.331(b)(3) of this subpart. The approving official will not approve the pending application for at least 15 days from the date the notification is last published. If comments are received as a result of the notification, they will be included in the environmental assessment and considered. Any necessary changes resulting from this consideration will be made in the assessment, impact determinations, and findings. If the changes require further implementation steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determination steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determinations, the approving official may continue to

process the application. The environmental documents, i.e., the assessment, related correspondence, Form FmHA or its successor agency under Public Law 103-354 1940-20, and the finding of no significant impact will be included with the approval documents which are assembled for review and clearance within the approving office.

(l) Whenever changes are made to an action or comments or new or changed information relating to the action's potential environmental effects is received after the assessment is completed but prior to the action's approval, such change, comment, or information will be evaluated by the approving official to determine the impact on the completed assessment. Whenever the contents or findings of that assessment are affected, the assessment process for that action will be revised and any other related requirement of this subpart met. Changes to an action in terms of its location(s), design, purpose, or operation will normally require, at a minimum, modification of the original assessment to reflect such change(s) and the associated environmental impacts.

(m) When comments are received after the action has been approved, the approving official will consider the environmental importance of the comments and the necessity and ability to amend both the action, with respect to the issue raised and the action's stage of implementation. The National Office may be consulted to assist in determining whether there are any remaining environmental requirements which need to be met under the specific circumstances. A similar procedure will be followed when new or changed information is received after project approval. Amendments and revisions to actions will be handled as specified in §§1940.310 through 1940.313 of this subpart.

§1940.319 Completing environmental assessments for Class I actions.

(a) As stated in this subpart, a main purpose of Form FmHA or its successor agency under Public Law 103-354 1940-21, is to provide a mechanism for reviewing actions with normally minimal impacts and for documenting a finding of no significant impact, as